

Choke, Suffocate or Strangle to Commit Indictable Offence

s.37(2) (NSW) Crimes Act

s 37 Do any of the following with intent to commit an indictable offence:

by any means attempts to choke suffocate or strangle any person

by any means calculated to choke suffocate or strangle, attempts to render any person insensible unconscious or incapable of resistance

Maximum penalty: 25 years

Substituted: 5.6.2014

s 37(2) Choke, suffocate or strangle another person so as to render the other person unconscious, insensible or incapable of resistance with the intention of committing, another indictable offence.

Commenced: 5.6.2014

Maximum penalty: 25 years

	NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
1.	HQ [2003] NSWCCA 336	s.37 [agg indecent assault] s.37 [agg indecent assault] s.61J	PG	FT 7y 11y NPP 8y FT 10y <u>Total:</u> 13y NPP 10y 3m	AD	Assaults	Threatened 15y old step-daughter with knife asking if he could touch her – victim resisted - made threats that he would kill her brother and cousin - twice attempted to strangle victim – on second attempt victim lapsed into semi- consciousness, and offender committed sexual assault offence
2.	McKechnie (31) [2006] NSWCCA 13	s.37 [sexual assault] s.61J	VG	15y NPP 11y 15y NPP 11y (concurrent)	AD	Extensive including violence - on bail	Attacked victim as she was leaving beach – attempted to choke victim – digital and penile penetration.

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

	NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
3.	MW (36) [2007] NSWCCA 291	s.37 [sexual assault] s.61J Sched: Act indecency	PG (25%)	8y NPP 5y 6m 8y NPP 5y 6m (concurrent)	Crown AA 11y NPP 8y FT 6y <u>Total:</u> 12y NPP 9y	Robbery, assault	Stepfather to 17y victim – angry with victim for calling police over incident between offender and victim’s mother – attacked victim in park – tried to gag victim with tea towel and tape – inserted finger in victim’s vagina – attempted penile penetration before grabbing victim’s throat and victim lost consciousness. Suffering significant degree of drug intoxication at time of offence – history of drug abuse.
4.	Munn (27) [2009] NSWCCA 218	s.37 [mal inflict GBH] s.59(1) AOABH	VG PG	9y NPP 5y 6m FT 18m <u>Total:</u> 10y NPP 6y 6m	AD	Violence, dishonesty	Assaulted estranged partner who wished to end relationship – victim gave offender lift in car - punched victim to head several times – victim lost control of vehicle and collided with another car – offender attempted to strangle victim – victim suffered loss of consciousness or approaching loss of consciousness. Suffered brain injury when young – previous admissions to psychiatric hospitals - drug abuse history.
5.	Cutrale (39) [2011] NSWCCA 214	s.37 s.61I	PG (25%)	9y NPP 6y 9m 7y NPP 5y 3m (concurrent)	Crown AA 9y NPP 6y 3m 7y NPP 5y 3m <u>Total:</u> 11y NPP 8y 3m	not significant	Grabbed female stranger walking into home units late at night – dragged her to nearby park – placed hand around throat and squeezed until she could not breathe – also placed hand over nose and mouth – offender had intercourse with victim while she was unconscious
6.	Bland (20) [2014] NSWCCA 82	s.37 [detain without consent] s.61M(2) Sched: 2 offences	PG (28.5%)	8y NPP 4y 5y NPP 3y 9m <u>Total:</u> 10y NPP 6y	AD	nil	Entered home of 15y brother of friend after victim’s father left for work – placed bag over head of sleeping victim and tied hands to bed – masturbated victim for 10 seconds – slapped around head during struggle – blocked mouth and nose and held hands around throat until victim nearly passed out – left after victim continued to struggle Some psychological problems

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7.	O'Connor (30) [2014] NSWCCA 53	s.37 [intimidate] s.37 [intimidate] s.61J Sched: 5 offences	VG	4y 4y 7y NPP 3y <u>Aggregate:</u> 9y NPP 3y 10m	Crown AA 4y 10y 10y NPP 7y 6m <u>Aggregate:</u> 14y NPP 10y 6m	extensive – breached bail for serious traffic matters	Had formed intimate relationship with victim – on night of offence victim declined intercourse – straddled victim in her bed and choked her causing her to fall off bed – kept hands around throat and lifted victim from floor into nearby lounge causing unconsciousness – victim awake to find herself in bed, gagged by bloodstained sock and hands tied by cable ties – offender cut off dress with scissors – threatened and laughed at victim – allowed her to be sick in bathroom – forced penile/vaginal intercourse from behind Subsequently assaulted sustaining serious brain injury in custody
8.	Sim (No.2) (32) [2019] NSWDC 316 Colefax SC DCJ	s.86(2)(b) s.94(1) s.61J Attempt s.37(2) s.61J s.95(1) Sched: 3 offences – taken into account on choking offence	PG (25%)	<u>Indicative</u> 5y 3m 4y 6m 4y 6m NPP 2y 8m 6y 9y NPP 5y 4 3y NPP 1y 9m <u>Aggregate:</u> 12y NPP 7y 2m		Record in Korea including some violence	Followed female home late at night – in driveway punched her several times then demanded and took money and phone – forcibly ripped off victim's clothes and took photo of victim in her underwear – chased fleeing victim and dragged her back using headlock – victim struggled to breathe – dragged victim across road and removed remaining clothing – took further photos then forced digital and penile vaginal intercourse – did not use condom – threatened to distribute photos if she contacted police – assaulted and stole handbag from second young female late at night several days later – choking offence just below mid-range – increased by schedule offences of recording and threatening to distribute intimate photos Korean born with difficult childhood

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	NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
9.	Wright (30) [2019] NSWDC 544 Lerve DCJ	s.111(2) agg enter house with intent to commit act of indecency Attempt s.37(2) Indecent assault	VG	<u>Indicative:</u> 3y 6y 2y <u>Aggregate:</u> 7y 3m NPP 5y		Numerous offences of violence – breached parole	Attended home of victim for purpose of cigarette – exposed penis through shorts – entered house while victim on toilet – choked victim 4-5 times – put hands down victim's shorts and touched vagina – first offence below mid-range – indecent assault mid-range – choking offence slightly below mid-range – victim had difficulty breathing but did not become unconscious – single episode of offending committed over short period
10.	Park (28) [2020] NSWCCA 90	Intimidate Common assault s.37(2) s.61J s.61I s.166 Take and drive Take and Drive Sched: 4 offences	PG (25%)	<u>Indicative</u> 1y 9m 5y 5y 6m NPP 4y 5y NPP 3y 6m 1y 6m 2y <u>Aggregate:</u> 11y NPP 8y	AD	Record from Korea – offences unclear	Committed offences over a month involving 5 different people several weeks after arriving in Australia – stole jeep from city car park – threatened and assaulted resident of guesthouse with knife and confronted female resident in toilet cubicle – stole car and personal belongings of roommate – choked and sexually assaulted female resident while inspecting room for let – forced fellatio twice – sexual offences mid-range – measure of concurrence for choking and sexual offences Korean – prospects of rehabilitation poor – isolation in custody due to language and lack of family On appeal: whether imposition of maximum permitted sentence for s.166 offences failed to reflect guilty plea discount – appeal to High Court also dismissed

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	NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	FACTS
11.	Matavesi (45) [2020] NSWDC 539 Haesler SC DCJ	s.37(2) s.86(2)(b) agg detention s.33B(1)(a) use offensive weapon s.195(1)(a) intentionally damage property	PG (25%)	<u>Indicative:</u> 3y 9m 3y 4m 1y 10m 9m <u>Aggregate:</u> 5y 3m NPP 3y		Lengthy record includes violence offences – breached ICO	Female – sustained assault on neighbour in victim's unit over three hours – kicked, punched and threatened to kill – pulled out clumps of hair – choked victims by wrapping sticky tape around her throat demanding money – assaulted victim with hammer and lamp – damaged property with hammer – continued choking using lamp cord – three incidents of choking causing loss of consciousness – significantly intoxicated at time of offences – unprovoked and spontaneous assault Deprived and dysfunctional childhood with continuing impact on personal life – <i>Bugmy</i> principles applied – mental health issues – need to balance considerations
12.	Tran (21) [2020] NSWDC 723 Sutherland SC DCJ	s.37(2)	PG	3y NPP 18m			Female – choked female partner seeking to make her inject heart medication for the purpose of 'dying together' – upset about breakdown of relationship – both offender and victim in highly emotional state – choked with intent to cause GBH Significant mental health and interpersonal problems Extensive consideration of changes to choking offences in 2014 – consideration of similar cases

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